

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHELLY A. SHUGERT and U.S. POSTAL SERVICE,
LOGAN POST OFFICE, Logan, OH

*Docket No. 99-1952; Submitted on the Record;
Issued August 2, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation for a concussion.

On December 14, 1998 appellant, then a 29-year-old part-time flexible clerk, was opening a bulk mail carrier that was overloaded. The left side of the gate of the carrier was stuck. Appellant pulled at the gate and it opened suddenly, striking her in the head. Appellant filed a claim for a concussion. In a January 15, 1999 letter, the Office informed appellant that it had accepted her claim for a concussion. Appellant's employment was terminated the same date. She received continuation of pay for the period December 15, 1998 through January 28, 1999 and began receiving temporary total disability compensation on January 29, 1999.

In a March 9, 1999 letter, the Office informed appellant that she had been placed on the periodic rolls for payment of compensation, beginning January 29, 1999. The Office indicated that payments of compensation would be made every four weeks. The Office stated that, whenever evidence in appellant's file indicated that she was no longer disabled because of her injury, the Office would provide her with a copy of the evidence and provide her with an opportunity to comment on it or submit other evidence supporting her entitlement before a decision would be made to terminate compensation.

In an April 16, 1999 decision, the Office terminated appellant's compensation effective April 24, 1999 on the grounds that appellant had recovered from the December 14, 1998 employment injury.

The Board finds that the Office improperly terminated appellant's compensation.

Under section 10.540 of the applicable regulations,¹ the Office, before it terminates compensation, is required to provide the beneficiary of the compensation a written notice of the

¹ 20 C.F.R. § 10.540(a).

proposed action and allow him or her 30 days to respond to the notice with evidence or legal argument in support of entitlement to continued compensation payment. Compensation payments are to continue until the evidence submitted has been reviewed or until the expiration of 30 days if the beneficiary does not respond to the notice of termination. Appellant did not receive any notice, prior to the April 16, 1999 decision, that the Office proposed to terminate her compensation, informed her of the evidence that formed the basis of the proposal or gave her 30 days to respond.

The regulations provide that no notice will be given if the beneficiary has no reasonable basis to expect that compensation will continue. The regulations list such situations as when a claim for compensation is made for a specified period of time and that time has expired; when a beneficiary dies; when the Office reduces or terminates compensation upon an employee's return to work; or termination of payment of medical benefits after a physician indicates that further medical treatment is not necessary or has ended.² The regulations also provide that no notice of termination will be given when compensation is terminated, suspended or forfeited due to a conviction for fraud in connection with a claim under the Federal Employees' Compensation Act; incarceration for conviction of any felony; failure to report earnings from employment or self-employment; failure or refusal to accept or continue suitable work; or refusal to undergo or obstruction of a medical examination as directed by the Office.³ None of the situations specified in the regulations apply to this case. When appellant was placed on the periodic rolls for compensation, the Office informed her that she would be given notice and an opportunity to respond if the Office should determine from the medical evidence that she was no longer disabled due to the employment injury. This notice indicated that appellant was not being paid compensation for a specified period that had ceased but was for an open-ended period that would cease only if medical evidence showed that her accepted employment-related disability had ceased. There is no evidence of record that appellant returned to work at the employing establishment or to any other employment. The record does not reveal any other basis, as described in the Office's implementing regulations, to terminate compensation without notice. The Office therefore improperly terminated appellant's compensation without the notice required by section 10.540.

² See 20 C.F.R. § 10.540(b).

³ See 20 C.F.R. § 10.540(c).

The decision of the Office of Workers' Compensation Programs, dated April 16, 1999, is hereby reversed.

Dated, Washington, D.C.
August 2, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member